

EXHIBIT 16

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
:
: (Jointly
Debtors : Administered)

- - -

Friday, May 1, 2009

- - -

Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -

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1 - - -
 2 INDEX
 3 - - -
 4
 5 Testimony of:
 6 PETER VAN N. LOCKWOOD, ESQUIRE
 7

8 By Mr. Brown Page 12
 9 By Ms. Alcabes Page 267
 10 By Ms. Cobb Page 339
 11 By Mr. Cohn Page 368
 12

EXHIBITS

17 NO. DESCRIPTION PAGE
 18 1 Amended Notice of Deposition
 19 of Asbestos PI Committee... 12
 20 2 Objections to the Official
 21 Committee... 12
 22 3 Form 8-K and Term Sheet 15
 23 4 Exhibit-6 to Exhibit Book 26
 24 5 First Amended Joint Plan of
 Reorganization... 27

Page 10

1	EXHIBITS (continued)		
2			
3	NO.	DESCRIPTION	PAGE
4	6	Exhibit-19 to Exhibit Book	83
5	7	Settlement Agreement	
6		* CONFIDENTIAL *	144
7	8	Complaint for Declaration of	
8		the Relief...	175
9	9	Diagram	175
10	10	Exhibit-2 to Exhibit Book	196
11	11	Exhibit-4 to Exhibit Book	224
12	12	Exhibit-10 to Exhibit Book	260
13	13	Travelers Casualty and Surety	
14		Company's Notice of Deposition	
15		to the Official Committee of	
16		Asbestos Personal Injury	
17		Claimants...	267
18	14	Debtors' Disclosure...	280
19	15	Documents bearing Bates stamps	
20		TRAVAS0000019 through 141	
21		* CONFIDENTIAL *	289
22	16	Notice of Service of Discovery	324
23			
24			

Page 11

1	- - -			
2	DEPOSITION SUPPORT INDEX			
3	- - -			
4				
5	Direction to Witness Not to Answer:			
6	Page	Line	Page	Line
7	NONE			
8				
9				
10	Request for Production of Documents:			
11	Page	Line	Page	Line
12	NONE			
13				
14				
15	Stipulations:			
16	Page	Line	Page	Line
17	12	02		
18				
19				
20	Area(s) Marked Confidential:			
21	Page	Line	Page	Line
22	152	01 through 168	03	
23	292	01 through 311	14	
24				

Page 12

1 - - -

2 (It is hereby stipulated and

3 agreed by and among counsel for

4 the respective parties that the

5 filing, sealing and certification

6 of the deposition are waived; and

7 that all objections, except as to

8 the form of the question, will be

9 reserved until the time of trial.)

10 - - -

11 PETER VAN N. LOCKWOOD,

12 ESQUIRE, after having been first

13 duly sworn, was examined and

14 testified as follows:

15 - - -

16 EXAMINATION

17 - - -

18 (ACC 30(b)(6)-1 and 2

19 premarked for identification.)

20 - - -

21 BY MR. BROWN:

22 Q. Good morning, Mr. Lockwood.

23 A. Good morning, Mr. Brown.

24 Q. You are appearing here today

Page 13

1 as the Rule 30(b)(6) designee for the

2 ACC, correct?

3 A. Correct.

4 Q. And that is with respect to

5 a number of 30(b)(6) notices, correct?

6 A. A very large number, yes.

7 Q. Can you look at the one

8 that's been put before you and marked ACC

9 Rule 30(b)(6)-1, which I will call ACC-1

10 here after.

11 A. I have it.

12 Q. Can you identify it?

13 A. It is an Amended Notice of

14 Deposition of Asbestos PI Committee

15 Pursuant to Rule 30(b)(6) served by four

16 insurance companies, One Beacon, Seaton,

17 Geico, and Columbia. And it contains an

18 attachment with definitions and topics

19 which are the subject matter of

20 testimony.

21 Q. Okay. And can you look at

22 the document that I put before you that's

23 marked ACC-2.

24 A. I have it.

Page 118

Page 120

1 provision, essentially that we are
2 going to transfer the assets to
3 the Trust and if you got a claim
4 or an interest in the assets, then
5 you can litigate that claim
6 against the Trust.

7 But we are going, I guess,
8 have potential confirmation
9 objections about whether there are
10 any such claims. I mean, the mere
11 assertion of a claim doesn't mean
12 that it's valid.

13 BY MR. BROWN:

14 **Q. Okay. If I can direct your**
15 **attention down to 7.2.4, which is**
16 **entitled Assignment and Enforcement of**
17 **Asbestos PI Trust Causes of Action.**

18 A. Yes.

19 **Q. I must confess, I am a bit**
20 **baffled by this one, so I need some help**
21 **with it.**

22 **How do Asbestos PI Trust**
23 **causes of action differ from asbestos**
24 **insurance rights?**

1 Asbestos PI Trust claim against the
2 Trust, the Trust could assert Grace's
3 contribution rights as a counterclaim to
4 that. That's two categories of things
5 that this is intended to include.

6 **Q. Okay. Let's go to page 64,**
7 **7.2.6, Creation and Termination of the**
8 **Asbestos PI TAC.**

9 A. Correct.

10 **Q. It says, "On or before the**
11 **Confirmation Date, the initial members of**
12 **the Asbestos PI TAC shall be selected by**
13 **the Asbestos PI Committee."**

14 **That has already occurred,**
15 **correct?**

16 A. Correct. They are
17 identified in the Asbestos PI Trust
18 Agreement.

19 **Q. Okay. How many actual**
20 **committee members are there on the**
21 **Asbestos PI Committee?**

22 A. I don't remember. But we
23 have the Disclosure Statement here. I
24 could pretty quickly find out by just

Page 119

Page 121

1 A. Well, I have to go back and
2 look at the definitions to answer that
3 question.

4 Well, I think asbestos PI
5 Trust causes of action does include
6 asbestos insurance rights.

7 **Q. What else does it include?**

8 A. Well, if you look at the
9 definition, it includes defenses such
10 that, for example, if a claimant says, I
11 have a valid claim against Grace that's
12 channelled to the Trust and the Trust
13 disagrees with it, the Trust retains all
14 the defenses to that claim that Grace
15 would have had. That's clause A under
16 definition 47.

17 **Q. Okay.**

18 A. Clause B is, for example,
19 contribution rights, et cetera. So, for
20 example, if the Trust has -- if Grace has
21 contribution rights that it has not
22 asserted and that which are still valid
23 against a codefendant in a tort system
24 and the codefendant brings in indirect

1 looking at it where they are identified.

2 **Q. Okay.**

3 A. It's certainly more than the
4 four that are going to be on the TAC.

5 **Q. Okay. Is it fair to say**
6 **that the actual committee members who are**
7 **asbestos claimants act through their tort**
8 **counsel in connection with their**
9 **obligations as committee members?**

10 A. As a general proposition,
11 that's true. In any given committee on
12 any given issue, an individual member
13 might choose to show up and act on their
14 own behalf, and there have been some
15 examples in the past where that has
16 occurred.

17 But, as a general
18 proposition, the committee members are
19 blue-collar folks of limited legal
20 knowledge, and they delegate to their
21 personal injury lawyers their sort of
22 activities acting for them as an agent on
23 these committees.

24 **Q. Okay. You are counsel to**

Page 122

1 **the Asbestos PI Committee. You don't**
 2 **have occasion, do you, to deal directly**
 3 **with the actual claimants?**

4 MR. FINCH: Object to the
 5 form.

6 THE WITNESS: That's not
 7 entirely true. I get calls
 8 periodically that I just got this
 9 incomprehensible Disclosure
 10 Statement from Grace and could you
 11 please tell me what it means or
 12 something. But as a general
 13 proposition --

14 MR. FINCH: Transfer to it
 15 to Finch.

16 THE WITNESS: Or where do I
 17 file my proof of claim.

18 But, as a general
 19 proposition, I don't nor do other
 20 folks at Caplin & Drysdale deal
 21 directly with original committee
 22 members.

23 BY MR. BROWN:

24 **Q. You deal with personal**

Page 124

1 **committee?**

2 A. Yes.

3 **Q. And do those committee**
 4 **members for those firms act through those**
 5 **four gentlemen?**

6 A. On the committee?

7 **Q. Yes.**

8 A. Generally, yes.

9 **Q. Okay. So is it fair to say**
 10 **that Mr. Rice, Mr. Weitz, Mr. Cooney, and**
 11 **Mr. Budd selected themselves to be**
 12 **members of the TAC?**

13 A. No, because there are many
 14 other members of the committee, and the
 15 committee as a whole, which, in this
 16 particular case, I believe has a majority
 17 of members that are not these four
 18 gentlemen, decided which of their members
 19 they thought would be appropriate persons
 20 to put on the TAC.

21 **Q. And how was that decided?**

22 A. As far as I know, they had
 23 informal discussions, and they had a
 24 committee meeting. I don't remember

Page 123

1 **injury attorneys, correct?**

2 A. As a general proposition, we
 3 deal with the PI lawyers who have been
 4 appointed by their client committee
 5 member to act on their behest in the
 6 committee.

7 **Q. Now, the TAC members are**
 8 **John Cooney, Perry Weitz, Joe Rice,**
 9 **and -- who was the fourth one?**

10 A. Well, I can tell you by
 11 looking at the PI Trust Agreement, which
 12 is Exhibit-2 to the Plan and looking at
 13 the signature page, we should have, which
 14 is --

15 **Q. Russell Budd.**

16 A. Russell Budd, John Cooney,
 17 Joseph Rice, and Perry Weitz.

18 **Q. And each of them works for a**
 19 **law firm, correct?**

20 A. Each of them is a partner a
 21 law firm, yes.

22 **Q. Sorry. I didn't mean to...**

23 **Now, does each of those law**
 24 **firms have a client that sits on the**

Page 125

1 whether there were votes or anything like
 2 that. But at the end of the day, through
 3 some sort of nomination or informal
 4 self-nomination or self-nomination,
 5 speeches, lobbying, discussions, what
 6 have you, there came a time at which the
 7 committee voted to select these four
 8 people.

9 **Q. Okay.**

10 A. And I might add that the
 11 Future Claimants Representative had a
 12 sort of a generalized oversight in the
 13 sense that while the Plan contemplates
 14 that the committee would nominate the
 15 TAC. If the FCR thought, for some reason
 16 or another, that somebody had been put on
 17 the TAC that was a real bad idea, the
 18 committee would probably have had to
 19 listen to the Future Representative's
 20 views on that even though the Futures Rep
 21 did not have sort of a formal veto or
 22 role in that process.

23 **Q. Okay. I want to now turn to**
 24 **page -- well, it's 69 on my version,**

Page 126

Page 128

Section 7.7, Conditions to Occurrence of the Confirmation Date, and I want to focus your attention first on (g).

A. I see it.

Q. What are the securities that are funding the Asbestos PI Trust?

A. The warrant and the Deferred Payment Agreement, which is a debt obligation, which also includes, I believe, a promissory note or promissory notes.

Q. Can you describe for me the circumstances under which the asbestos PI claim -- excuse me -- the Asbestos PI Trust will be funded with dividends?

A. In the event that it exercises the warrant and acquires stock pursuant to that exercise and the stock pays dividends, it will get dividends.

Q. And if the warrant is not exercised?

A. Then it won't get dividends.

Q. What about if there is a default under the deferred payment note?

and the tort system, et cetera, you would have a first-come-first-serve operation where there was the distinct possibility that, as it happened in the Manville Trust at the very beginning, all the money would run out the door at the front end, and there wouldn't be anything left for future claimants, which would violate 524(g).

BY MR. BROWN:

Q. Okay. Well, the way that this provision is written suggests that any procedures other than those that are set forth in this Plan would defeat the purposes of Section 524(g).

Is that what is intended here?

MR. FINCH: Object to form.

MS. HARDING: Object to

form.

BY MR. BROWN:

Q. Are there other options, is

Page 127

Page 129

A. My recollection is that the Trust has the right to get 50.1 percent of the stock of the Debtor under those circumstances.

But, again, the terms of -- that's a very complicated set of documents, and the precise terms of that are whatever the document states. I can only give you a sort of a very generalized description.

Q. Okay. Let me draw your attention now down to (l), condition (l).

A. Yes, I see it.

Q. What does that mean?

MS. HARDING: Object to form.

THE WITNESS: Well, what it means is that if you didn't have a TDP, which includes things like a payment percentage and mechanisms for trying to trying to limit the ways in which the Trust expends monies on claims, and you just had sort of a come in, sue the Trust

the question?

A. If the question is could one hypothesize a somewhat different set of TDPs that had somewhat different procedures, the answer is depending on what that different TDP set of procedures was, you might be able to say the same thing about it.

The purpose of this thing is to say that this structure, according to the court, satisfies the requirements of 524(g) that say that you have to establish this requirement.

I mean, this is a finding of fact that is intended to have the court rule that the Plan does, in fact, meet the requirements of a subsection of 524(g).

Q. You could, in fact, have a Plan that met the qualifications for 524(g) that actually had a role for asbestos insurance entities, correct?

MR. FINCH: Object to form.

MS. HARDING: Object to

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: : Chapter 11
:
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
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: (Jointly
Debtors : Administered)

Monday, May 4, 2009

Continuation of oral
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Page 458

Page 460

1 - - -
2 INDEX
3 - - -

4
5 Testimony of:

6 PETER VAN N. LOCKWOOD, ESQUIRE

7
8 By Mr. Cohn Page 462
9 By Mr. Wisler Page 531
10 By Mr. Mangan Page 544
11 By Ms. Casey Page 549
12 By Mr. Speights Page 563
13 By Mr. Plevin Page 606
14 By Mr. Schiavoni Page 624
15 By Mr. Brown Page 636

16
17 - - -
18 EXHIBITS
19 - - -

20 NO. DESCRIPTION PAGE
21 17 Notice of Deposition of
22 Asbestos PI Committee Pursuant
23 to Rule 30(b)(6) 460
1 18 Exhibit 8 to Exhibit Book 460
2 - - -

Page 459

1 - - -
2 DEPOSITION SUPPORT INDEX
3 - - -

4
5 Direction to Witness Not to Answer:

6 Page Line Page Line
7 620 11 632 14

8
9
10 Request for Production of Documents:

11 Page Line Page Line
12 NONE

13
14
15 Stipulations:

16 Page Line Page Line
17 12 02
(Previously)

18
19
20 Area(s) Marked Confidential:

21 Page Line Page Line
22 NONE
23
24

1 - - -
2 PETER VAN N. LOCKWOOD,
3 ESQUIRE, after having been first
4 duly sworn, was examined and
5 testified as follows:
6 - - -

7 PROCEEDINGS
8 - - -

9 (ACC 30(b)(6)-17 and 18
10 premarked for identification at
11 this time.)
12 - - -

13 MR. COHN: Go ahead,
14 Mr. Schiavoni.

15 MR. SCHIAVONI: I just
16 wanted to object. We have written
17 the Libby claimants separately
18 about this, but we object to them
19 doing any questioning of
20 Mr. Lockwood on the grounds that
21 the Libby claimants are members of
22 the committee; they have not
23 objected to Mr. Lockwood's
24 designation to testify on behalf

Page 461

1 of the committee; nor have they
2 offered in response to requests
3 any alternative witness to testify
4 on any topics on which they
5 disagree with Mr. Lockwood.

6 We see Mr. Lockwood's
7 testimony and the failure of the
8 Libby claimants to object to the
9 designation of Mr. Lockwood as an
10 adoptive omission by the Libby
11 claimants, and we object to any
12 questioning by them as essentially
13 questioning seeking to impeach
14 their own witness. Thank you.

15 MR. COHN: You are welcome.
16 We will respond to your
17 correspondence, but, for the
18 moment, let's simply say that we
19 reject the basis for your
20 objection.

21 MR. SCHIAVONI: If there are
22 any topics that the Libby
23 claimants object to Mr. Lockwood's
24 designation on, we need to know

Page 638

Q. I am sorry. When you said members of the ACC itself, what members are you talking about?

A. Well, I was referring to the personal injury counsel who were the delegated representatives of the individual ACC members, if that's what you are driving at.

Q. That's what I am driving at. And who specifically were they?

A. As far as I know -- well, the way in which the process works, in general, is sometimes the ACC has in-person meetings, sometimes it has telephonic meetings, sometimes documents get sent to it by email as PDF attachments or whatever, and the ACC has asked do you want to have a meeting or is this good enough for you. So there is a variety of ways in which the ACC views an input as obtained.

And my answer was simply that at the conclusion of a process, the

Page 640

general proposition, I believe they are in the Disclosure Statement. If they are, it's a hell of a lot better description of them than my memory. I just --

MR. FINCH: There is also an order entered by the U.S. Trustee that identifies the 11 individual members of the ACC and their counsel, care of their firms.

BY MR. BROWN:

Q. That's what I am driving at. I would like to know who the individuals were at their firms that were involved.

A. Well, let me just see. I am somewhat surprised. The Disclosure Statement does not appear to contain the members of the ACC. It just lists the counsel representing the committee as a whole. I had misremembered. I had thought that it did.

I can't really remember. I mean, I know the four -- I identified four earlier as being involved in the

Page 639

members of the ACC had weighed in in one or more of the ways in which I had described some of them had; they all had the opportunity to express their views; and, therefore, the final product was the product of their input. And there was a final vote to go forward with the document.

Q. Okay. And when you say the members, you are talking about their actual personal injury counsel?

A. As far as I know. But, again, I couldn't tell you whether an individual personal injury lawyer might have consulted with his client, the member, on one or more aspects of the TDP or, for that matter, even sent the client a copy of the entire TDP and had a discussion with him about it. I certainly couldn't exclude that.

Q. Can you tell me the list of counsel that you are talking about, the actual names?

A. They would be -- as a

Page 641

discussions with Grace. They are included. I think there is at least nine members of the ACC. I do not recall, as I sit here, who the other five members of the ACC are. I mean, they are of record -- strike that. I do not recall who the other five lawyers for the members of the ACC are. They are of record.

Q. But the four to which you are referring is Mr. Budd, Mr. Rice, Mr. Cooney, and Mr. Weitz?

A. Correct.

Q. You were talking about the Trust Distribution Procedures and who drafted them.

Would your answer be the same with respect to the Trust Agreement?

A. On the Trust Agreement, I think there was more input from Grace, and, indeed, I think there may have been some from counsel from Sealed Air, as I think about it. And, indeed, now that I think about it, I think there may have

Page 642

1 even been a little input from the Sealed
2 Air counsel on the TDP. But, again, the
3 primary draftspersons were counsel for
4 the ACC and the FCR.

5 **Q. Okay. Can I direct your**
6 **attention to the Plan, which I guess is**
7 **ACC-5, and specifically it's page 70 on**
8 **my copy. It's under Section 7.7**
9 **Conditions to Occurrence of the**
10 **Confirmation Date, specifically condition**
11 **(j).**

12 A. I see it.

13 **Q. Can you just take a moment**
14 **to read that? I have one question on**
15 **that.**

16 A. I have read it.

17 **Q. In the portion of that**
18 **condition dealing with asbestos PD**
19 **claims, second-to-the last line, you will**
20 **see the words "if any" appear there, but**
21 **the same language doesn't appear for**
22 **asbestos PI claims.**

23 **Why?**

24 MR. FINCH: Objection,

Page 644

1 demands, or if there are, they
2 will be valid.

3 MR. BROWN: Okay. That's
4 all I have.

5 MR. FINCH: Could you go
6 back to the question I asked you
7 to find and read that question and
8 read the answer, and I will see if
9 I have got any redirect.

10 Does anybody else have any
11 questions?

12 (No response.)

13 MR. FINCH: Hearing none,
14 let me just hear that back.

15 (The reporter read from the
16 record as requested.)

17 MR. FINCH: No questions.

18 I think that is the end of
19 the deposition.

20 (The deposition concluded at
21 4:19 p.m.)

Page 643

1 foundation.

2 THE WITNESS: I need to talk
3 to my counsel about this one.

4 (There was a discussion held
5 off the record between the witness
6 and counsel at this time.)

7 MR. FINCH: The discussion
8 was with respect to whether I need
9 to instruct him not to answer the
10 question. He is allowed to answer
11 the question as long as doing so
12 doesn't reveal privileged
13 communication.

14 I think you can answer.

15 THE WITNESS: Barely.

16 The "if any" is in there, as
17 best I can recall, because the
18 Plan proponents -- in contrast of
19 PI, "if any" is under PD. Because
20 the Plan proponents are quite
21 confident that there is going to
22 be lots of future PI demands and
23 are less confident that there is
24 going to be lots of future PD

Page 645

1 CERTIFICATE

2
3
4 I HEREBY CERTIFY that the witness
5 was duly sworn by me and that the
6 deposition is a true record of the
7 testimony given by the witness.
8
9
10
11
12

13 _____
14 Lori A. Zabielski

15 Registered Professional Reporter

16 Dated: May 5, 2009
17
18
19
20

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